

THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

JOHN E MCGINNIS, ET AL.	§	
	§	
v.	§	CIVIL NO. 4:24-cv-247-SDJ-BD
	§	
NEWREZ MORTGAGE, ET AL.	§	
	§	
	§	

**MEMORANDUM ADOPTING THE REPORT AND
RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE**


Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the Magistrate Judge pursuant to 28 U.S.C. § 636. On October 15, 2024, the Magistrate Judge entered proposed findings of fact and a recommendation (the “Report”), (Dkt. #23), that Plaintiff’s complaint, (Dkt. #3), be dismissed without prejudice.

Having received the Report, and no timely objections being filed, the Court determines that the findings and conclusions contained in the Report should be **ADOPTED** in part and **MODIFIED** in part. Because Plaintiffs’ complaint inadequately alleges jurisdiction and capacity to sue for the reasons explained in the Report, it should be dismissed. It is the practice of this Court, however, to afford litigants at least one opportunity to cure pleading deficiencies before dismissing a case, unless it is clear that the defects are incurable. *See, e.g., Brady v. Evangelical Lutheran Good Samaritan Soc’y*, No. 4:22-CV-841-SDJ, 2023 WL 6393882, at *6 (E.D. Tex. Oct. 2, 2023).

It is therefore **ORDERED** that the complaint, (Dkt. # 3), is **DISMISSED WITHOUT PREJUDICE**.

It is further **ORDERED** that Plaintiffs have fourteen days from the date of this order to amend the complaint to cure the deficiencies identified in the Report (Dkt. # 23). If no amended complaint is filed within fourteen days, the complaint, (Dkt. # 3), will be dismissed with prejudice.

So ORDERED and SIGNED this 20th day of November, 2024.


SEAN D. JORDAN
UNITED STATES DISTRICT JUDGE